



1401 H Street, N.W.
Suite 1020
Washington, D.C. 20005
Office 202/326-3818
Fax 202/326-3826
800/SKY-PAGE PIN #352-7107

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Marvin E. Bailey
Director-Federal Relations

July 31, 1997

EX PARTE OR LATE FILED

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, NW
Washington, DC 20554

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RE: Ex Parte Statement
Docket No. 96-45
Universal Service Proceedings

Dear Mr. Caton:

On July 30, 1997, I attended a meeting with Irene Flannery, Diane Law and Jaime Rubin of the FCC and Deb Kriete with State Staff to discuss the Order on Reconsideration of C. C. Docket 96-45, July 10, 1997. The meeting pointed to the hardships and disadvantages created for schools and libraries by certain of the new rulings in the Order. Attached is a document that was used in the discussion.

Also in attendance were Alec Johnson, American Library Association; Kari Arfstrom, American Association of School Administrators; Teresa Pitts, National Cable Television Association; Leslie Harris, ISTE/COSN; and Dennis Bybee, Global Village Schools; B. B. Nugent, US West; and Tom Moynihan, Bell Atlantic.

Sincerely,



Marvin E. Bailey
Director, Federal Relations

Attachment

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July 30, 1997

Issues with the Order on Reconsideration of July 10, 1997

Presented by Representatives from American Library Association, American Association of School Administrators, Global Village Schools, ISTE/COSN, Ameritech, Bell Atlantic-NYNEX, US West, SBC Corporation; and supported by BellSouth

The Commission's Order on Reconsideration of the Universal Service Order has disadvantaged many schools and libraries by nullifying their eligibility for discounts on many newly-contracted services.

- ◇ adds 12/31/98 termination date for certain contracts
- ◇ schools, libraries now making good-faith business decisions
 - school and library boards typically make decisions in early spring in preparation for annual budget cycles
 - Joint Board decision clear, established spirit and intent
 - May 8 order, still no reason to suspect discount penalties
- ◇ unfortunately, language of Order jeopardizes discounts for those services in numerous cases
- ◇ suggest Commission reconsider July 10 order

The Joint Board's Recommended Decision led schools and libraries to believe that existing contracts prior to the adoption of the rules would be eligible for discounts.

- ◇ paragraph 572 of Recommended Decision -- Joint Board addressed issue of discounts on existing services. Established degree of comfort existing contracts eligible for discounts
- ◇ May 8, universal service order, paragraph 545 introduced "black hole"; many parties spoke to Commission asking for clarification
- ◇ until July 10, no school, library, service provider had reason to believe that intent and spirit would not be honored
- ◇ normal process for procuring services at lowest possible prices continued after November 8 and to current day
- ◇ most schools, libraries that have entered into contracts during this time period are even now most likely unaware that they have jeopardized their discount status.

Schools and Libraries have had and will have many reasons to procure contracts for services after November 8, 1996 and before the web site becomes operational for which contract dates will extend beyond 12/31/98.

- ◇ most involve formal RFPs; contracts awarded based on competitive bids
- ◇ to secure lowest price, schools, libraries take advantage of amortization of service provider's capital investment over number of years
- ◇ schools, libraries not inclined to rebid all services each year regardless of capital intensity-- churn prohibitive; requires much human capital
- ◇ As result they advantage better price performance of long term contracts

Example Situations:

- ◇ transport facilities for distance learning applications.
- ◇ expiration of existing contracts for services such as large voice systems or wide area networks
- ◇ development of state networks and other consortia
- ◇ advantaging existing state-adopted initiatives
- ◇ federal programs and initiatives (Challenge grants, TIAPP, Goals 2000 et al) which suggest five year planning horizons
- ◇ resourcing of new schools or library facilities

By nullifying discounts on all contracts with termination dates beyond 12/31/98, many schools and libraries are disadvantaged.

- ◇ created retroactive rule on critical business decisions
- ◇ schools, libraries could not have foreseen on November 8 that Commission would later introduce a problematic ruling nullifying discounts
- ◇ even after July 10 Order, no widespread outreach to advise schools and libraries that their current actions may place discounts in jeopardy
- ◇ once a school, library learns that good faith activities during this time period result in loss of discounts, it must consider how to void those actions:
 - can expect unanticipated costs in the form of contract termination fees; termination fees as high as 70% of remaining contract value
 - human labor cost of reinitiating identical processes and procedures to rebid the same RFP

- significant community reaction from parents, special interest groups (legal fees, termination fees, labor, etc.)
- delayed installation of service: legal activities, board decisions
- contracts may have to be secured for short one-year time periods: unattractive pricing, uneconomical decisions
- curriculum and course plans revised as result of delays

The Order on Reconsideration should be changed to permit discounts on all existing contracts up to the date the Fund Administrator's web site becomes operationally available.

- ◇ schools and libraries already have strong incentives to secure the lowest rates they can obtain as a pre-discount price
- ◇ service providers have same incentive and amortize capital investment requirements over contract terms to provide lowest possible rates
- ◇ best deal schools, libraries can arrange will, in fact in most if not all cases, be a multi-year contract
- ◇ schools and libraries should not be penalized for making good business decisions on behalf of their students, faculty, customers
- ◇ the Commission should issue another reconsideration permitting discounts on all contracts signed prior to the development of procurement web site
- ◇ at a minimum, the Commission must reconsider its decision to make retroactive rules nullifying discounts on contracts signed after November 8, 1996 and before the July 10 Reconsideration
 - suggest that all contracts signed after November 8 and before thirty days after the Order on Reconsideration is published in the federal register be eligible for all discounts
 - timing would allow outreach to schools, libraries, service providers to consider necessary penalties that might apply

Example Contract signings with Schools, Libraries Post November 8, 1996

Ameritech:

- * After an extensive RFP, a multi-year contract was signed in February, 1997 for a state backbone network linking all schools in Ohio. To date, orders for over 300 T1's have been received with installations in various stages of completion.
- * 18 orders have been received since Nov. 8 in Indiana for distance learning facilities over fiber. The orders take advantage of the state's Opportunity Indiana program which provides incentives and hardware for schools. The orders are primarily from rural areas seeking to add courses to their curriculum. The orders are all under three year contracts and fiber installation has begun for many of the schools.
- * Indianapolis Public Schools, faced with contract expiration, signed new contracts for Centrex, wide area-network, distance learning facilities, and cable tv. The contracts are for several million dollars over varying multi-year terms. IPS should be receiving 80% discounts from the universal service fund on these services.
- * Columbus Public Schools have signed contracts, also for several million dollars, for a fiber-based OC-12 WAN, with another 150 T1 circuits. The Columbus Schools are also eligible for 80% discounts.
- * Hundreds of other contracts with many locations for 56KB, T1, frame relay, ISDN and Centrex service have also been signed.

NYNEX:

- * reports nearly 200 contracts in New York State alone since Nov. 8th

Bell Atlantic:

- * New Jersey's largest school district signed a multi-year contract to provide all schools with access to the Internet. This was driven by legislation to meet new NJ Core Curriculum Standards. The district is eligible for 90% discounts.
- * A large Maryland school district reached the expiration date of a three year contract for its WAN. The district renewed a multi-year contract to continue with the service.